

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-358, §2(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.”

Subsec. (b). Pub. L. 103-358, §2(b)(2), inserted “other legal process,” after “order.”

Subsec. (c). Pub. L. 103-358, §2(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103-358, set out as a note under section 8345 of this title.

§ 8468. Annuities and pay on reemployment

(a) If an annuitant, except a disability annuitant whose annuity is terminated because of the annuitant's recovery or restoration of earning capacity, becomes employed in an appointive or elective position, an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant's pay, except for lump-sum leave payment purposes under section 5551. Unless the annuitant's appointment is on an intermittent basis or is to a position as a justice or judge (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees, or unless the annuitant is serving as President, deductions for the Fund shall be withheld from the annuitant's pay under section 8422(a) and contributions under section 8423 shall be made. The deductions and contributions referred to in the preceding provisions of this subsection shall be deposited in the Treasury of the United States to the credit of the Fund. The annuitant's lump-sum credit may not be reduced by annuity paid during the reemployment.

(b)(1)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, the annuitant's annuity on termination of reemployment shall be increased by an annuity computed under section 8415(a) through (h) as may apply based on the period of reemployment and the basic pay, before deduction, averaged during the reemployment.

(B)(i) If the annuitant is receiving a reduced annuity as provided in section 8419, the increase in annuity payable under subparagraph (A) is reduced by 10 percent and the survivor annuity or combination of survivor annuities payable under section 8442 or 8445 (or both) is increased by 50 percent of the increase in annuity payable under subparagraph (A), unless, at the time of claim-

ing the increase payable under subparagraph (A), the annuitant notifies the Office in writing that the annuitant does not desire the survivor annuity to be increased.

(ii) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for not less than 1 year of full-time service (or the equivalent thereof, in the case of full-time¹ employment), the survivor annuity payable is increased as though the reemployment had otherwise terminated.

(2)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, the annuitant may elect, instead of the benefit provided by paragraph (1), to have such annuitant's rights redetermined under this chapter.

(B) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for at least 5 years of full-time service (or the equivalent thereof in the case of part-time employment), any person entitled to a survivor annuity under section 8442 or 8445 based on the service of such annuitant shall be permitted to elect, in accordance with regulations prescribed by the Office of Personnel Management, to have such person's rights under subchapter IV redetermined. A redetermined survivor annuity elected under this subparagraph shall be in lieu of an increased annuity which would otherwise be payable in accordance with paragraph (1)(B)(ii).

(3) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for a period of less than 1 year, or on a part-time basis for periods equivalent to less than 1 year of full-time service, the total amount withheld under section 8422(a) from the annuitant's basic pay for the period or periods involved shall, upon written application to the Office, be payable to the annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8424(d)).

(c) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(d) If an annuitant becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, the annuitant may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8424(a), the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(e) A reference in this section to an “annuity” shall not be considered to include any amount payable from a source other than the Fund.

(f)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case

¹ So in original. Probably should be “part-time”.

basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(g)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(h)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Committee on House Oversight of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Committee on House Oversight of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, “agency in the legislative branch”, “employee of the House of Representatives”, “employee of the Senate”, and “congressional employee” each has the meaning given to it in section 5531 of this title.

(i)(1) For the purpose of subsections (f) through (h), “Executive agency” shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (f), (g), or (h) is in effect shall not be

considered an employee for purposes of this chapter or chapter 83 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 576; amended Pub. L. 100-238, title I, §134(a), Jan. 8, 1988, 101 Stat. 1762; Pub. L. 101-509, title V, §529 [title I, §108(c)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101-510, div. A, title XII, §1206(j)(3), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102-190, div. A, title VI, §655(c), Dec. 5, 1991, 105 Stat. 1392; Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359; Pub. L. 105-55, title I, §107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105-61, title V, §516(a)(9), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 108-176, title II, §226(b)(2)(C), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

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2004—Subsec. (i)(1). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

2003—Subsec. (b)(1)(A). Pub. L. 108-176 substituted “through (h)” for “through (g)”.

1997—Subsec. (b)(1)(A). Pub. L. 105-61 substituted “through (g)” for “through (f)”.

Subsec. (h)(2)(B), (3). Pub. L. 105-55 substituted “the Committee on House Oversight of the House of Representatives” for “the Speaker of the House of Representatives”.

1992—Subsec. (f). Pub. L. 102-378 repealed Pub. L. 101-510, §1206(j)(3). See 1990 Amendment note below.

1991—Subsec. (f)(3). Pub. L. 102-190, §655(c)(2), struck out par. (3) which read as follows: “An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of chapter 83 or this chapter while such waiver is in effect.”

Subsecs. (g) to (i). Pub. L. 102-190, §655(c)(1), added subsecs. (g) to (i).

1990—Subsec. (f). Pub. L. 101-510, §1206(j)(3), added a subsec. (f) identical to that added by Pub. L. 101-509, see below. Pub. L. 102-378, §8(a), repealed Pub. L. 101-510, §1206(j)(3), and provided that this title shall read as if section 1206(j)(3) had not been enacted.

Pub. L. 101-509 added subsec. (f).

1988—Pub. L. 100-238 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual’s separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105-61, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 134(d) of Pub. L. 100-238 provided that:

“(1) GENERALLY.—The amendments made by this section [amending this section and provisions set out as notes under section 8331 of this title] shall take effect on the date of the enactment of this Act [Jan. 8, 1988], and as provided in paragraph (2), shall apply with respect to any individual who becomes a reemployed annuitant on or after such date.

“(2) EXCEPTION.—The amendment made by subsection (b) [amending provisions set out as a note under section 8331 of this title] shall apply with respect to any election made by a reemployed annuitant on or after the date of the enactment of this Act [Jan. 8, 1988].”

ANNUAL REPORT TO CONGRESS

Each agency in legislative branch to submit to Speaker of House of Representatives and Committee on Rules and Administration of Senate, for each calendar year, a written report on how authority made available as result of amendment by Pub. L. 102-190 was used by such agency during the period covered by such report, see section 655(d) of Pub. L. 102-190, set out as a note under section 8344 of this title.

§ 8469. Withholding of State income taxes

(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount

erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(e) For the purpose of this section—

(1) the term “State” means a State, the District of Columbia, or any territory or possession of the United States; and

(2) the term “annuitant” includes a survivor who is receiving an annuity from the Fund.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 576.)

§ 8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 577.)

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM**§ 8471. Definitions**

For the purposes of this subchapter—

(1) the term “beneficiary” means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

(2) the term “Council” means the Employee Thrift Advisory Council established under section 8473 of this title;

(3) the term “participant” means an individual for whom an account has been established under section 8439 of this title;

(4) the term “person” means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

(5) the term “Thrift Savings Fund” means the Thrift Savings Fund established under section 8437 of this title.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 577.)

EFFECTIVE DATE

Subchapter VII effective June 6, 1986, see section 702(b)(1) of Pub. L. 99-335, set out as a note under section 8401 of this title.